PITCHAI CHETTY SUNDARAM CHETTY & ORS.

v.

SETHU SIVANU CHETTIAR

HIGH COURT MALAYA, PENANG
MOHAMED DZAIDDIN J
[CIVIL SUIT NO. 175 OF 1983]
24 SEPTEMBER 1984

LANDLORD AND TENANT: *Interim injunction - Failure to disclose material facts - Whether frivolous and vexatious claim - No serious issue to be tried - Setting aside the injunction.*

CIVIL PROCEDURE: *Duplicity in the claims in two separate actions - Whether unnecessary, frivolous and vexatious.*

The High Court had granted an interim injunction against the defendant restraining him from interfering with the plaintiffs' right to occupy the stated premises. The defendant now applies to set aside that injunction. The history behind the High Court action was as follows:

The defendant-applicant was the plaintiff in an earlier Magistrate's Court action and had claimed for vacant possession of the said premises against one Gopal. Consent judgment was obtained. Thereafter, Gopal served notices to vacate to the occupiers who were then on the premises (the occupiers are now the plaintiffs in this High Court suit). These plaintiffs then contended that they were co-tenants with Gopal. They also proceeded to take two other steps: Firstly, they applied to the Magistrate's Court to be added as defendants and secondly, they filed the current writ asking for, *inter alia*, a declaration as to their co-tenant status and an injunction restraining the defendant-applicant from interfering with their right to occupy the said premises. The High Court granted an interim injunction, which the defendant-applicant is applying to set aside.

Held:

[1] Interim injunction should not have been granted because of plaintiffs' failure to disclose material relevant facts.

[2] Duplication of claims in the Magistrate's Court which was still pending and in the current High Court suit, renders the present action unnecessary, frivolous and vexatious.

[3] As the claim was frivolous and vexatious, there could be no serious issue to be tried.

[Interim injunction set aside.]

Cases referred to:

Attorney-General of the Duchy of Lancaster v. London & North Western Railway Co. [1892] 3 Ch 277
Re Vernazza [1959] 1 WLR 622
Castro v. Murray [1875] 10 Ex 213
Dawkins v. Prince Edward of Weimer [1876] 1 QBD 499
American Cynanamid v. Ethicon Ltd. [1975] 1 All ER 504

Other source referred to:

Supreme Court Practice Mallal 2nd Edn. p. 225

For the plaintiffs/respondents - V. Muthusamy; M/s. Muthusamy & Co.
For the defendant/applicant - S. P. Annamalai; M/s. Annamalai & Co.

JUDGMENT

Mohamed Dzaiddin J:

This is an application by the applicant defendant for an order that the interlocutory injunction granted on 16 May 1983 be set aside. The grounds of this application are set out in his affidavit affirmed on 21 May 1983 (Encl. 13).

The applicant was the plaintiff in Bukit Mertajam Magistrate's Court Civil Action No. 242/82, who claimed for vacant possession of premises No. 24, Jalan Asmara, Bukit Mertajam against the defendant, Gopal s/o Manickam Chettiar. On 6 January 1983 he obtained consent judgment whereby Gopal was ordered to deliver vacant possession of the said premises on or before 31 January 1983. On 25 January 1983, the defendant served notices to the plaintiffs who were the occupiers of part of the said premises requiring them to vacate the premises within one week. On 2 February 1983, the plaintiffs through their solicitors, Messrs V. Muthusamy and company wrote to the applicant's solicitors maintaining that they were co-tenants together with Gopal.

On 28 February 1983, the applicant proceeded to file a notice of application to issue a writ of possession against Gopal and other occupiers including the plaintiffs. This application was supported by the affidavits of Gopal and the applicant affirmed on 21 & 22 February respectively. In his affidavit, Gopal deposed that he was the only tenant of the premises which he derived from his late father. There were no other co-tenants or sub-tenants and the plaintiffs were merely licensees.

In the meantime, on 18 February 1983 the plaintiffs filed a notice of application in the Bukit Mertajam Magistrate's Court for an order that they be added as defendants in Bukit Mertajam MCCA. 242/82 and that they be at liberty to defend the suit. They also asked that the execution proceedings be stayed. The ground of their application was that they claimed to be tenants of the said premises and that they had interest in law and equity and were affected by such consent judgment. The hearing of this application is still pending.

Not being satisfied with the application in the Bukit Mertajam Magistrate's Court, the plaintiffs instructed their solicitors to give notice to the applicant on 1 March 1983 alleging that the applicant was trespassing on the said premises by storing second-hand goods therein. The plaintiffs took further step by filing a writ in this High Court against the applicant asking for the following declarations and reliefs:

(a) A declaration that the plaintiffs are the tenants and/or the co-tenants of premises No. 24, Jalan Asmara, Bukit Mertajam, Province Wellesley together with one Gopal s/o Manickam Chettiar;

(b) Alternatively a declaration that the plaintiffs are the sub-tenants of Gopal s/o Manickam Chettiar;

(c) A declaration that the defendant is not entitled to enter premises No. 24, Jalan Asmara, Bukit Mertajam, PW until the final disposal of Bukit Mertajam Magistrate's Court Civil Action No. 242 of 1982;

(d) An injunction to restrain the defendant whether by himself or by his servants or agents or otherwise howsoever from preventing or interfering or harassing the plaintiff's right to occupy or use or entry to premises No. 24, Jalan Asmara, Bukit Mertajam, PW;

(e) Damages for trespass;

(f) Costs;

(g) Such further or other relief as this Honourable Court deems fit and proper.

Subsequent to the filing of the civil suit, on 21 April 1983 the plaintiffs applied for an interim injunction against the applicant which was granted on 16 May 1983 by my predecessor Gunn J.

These events are set out to enable me to appreciate the background of the matter which persuaded my brother Judge in granting the interim injunction. Having considered them, I am satisfied that the interim injunction ought not in the first place to have been granted for the following reasons.

The plaintiffs have failed to disclose in their affidavits all the relevant details of the course of action that had transpired which I have chronologically set out above. It is wrong for me to speculate what my predecessor would have decided had these matters been properly presented to him at the time when he granted the interim injunction. However, upon reappraisal of the matter before me there is no doubt in my mind whatever had these facts been properly put on record and made available at the hearing of the application, the order for an interim injunction would not have been granted.

In my opinion the action filed by the plaintiffs in the present suit i.e. High Court Civil Suit No. 175/1983 is obviously unnecessary, frivolous and vexatious. It should be noted that there is pending application by the plaintiffs in the Magistrate's Court Bukit Mertajam for an order that they be added as defendants in Civil Action No. 242 of 1982 and that they be given liberty to file their defence. In addition, they have also asked for a stay of execution of proceeding pending the outcome of their application. There is no necessity for the plaintiffs to have field an action in this High Court asking for the same relief and making other claims e.g. trespass. As to this allegation of trespass, there cannot be any act of trespass by the applicant defendant when the Court below has held that he was the owner and was entitled to vacant possession of his premises No. 24, Jalan Asmara, Bukit Mertajam, the very premises which the plaintiffs have claimed to be the tenants. The present suit to my mind was filed with the view to frustrate and delay the applicant to take possession of the property in the event the plaintiffs' application in the Bukit Mertajam Magistrate's Court to be added as defendants and with liberty to file their defence (even after consent judgment was obtained by the applicant) was dismissed. This is simply a frivolous and vexatious action. "By this is meant a case which is obviously frivolous or vexatious or obviously unsustainable":: per Lord Lindly LJ in *Attorney-General of the Duchy of Lancaster v. London & North Western Railway Co.* [1892] 3 CH 277. In fact, Lord Parker CJ in *Re Vernazza* [1959] 1 WLR 622 had said that in considering whether any proceedings were vexatious one was entitled to, and ought to, look at the whole history of the matter, and it was not determined by whether the pleading disclosed a cause of action. In the present case, looking at the pleading and bearing in mind that there is similar application pending in the lower Court, I am of the opinion that the present case is clearly frivolous and would be an abuse of the process of Court. Mallal's Supreme Court Practice Second Edition under *Abuse of the Process of the Court* at p. 225 states as follows:

> The process of the Court must be used *bona fide* and must not be misused. The Court will prevent the improper use of the Court process and will in a suitable case do so summarily where it has been used vexatiously and oppressively: *Castro v. Murray* [1875] 10 Ex 213; *Dawkins v. Prince Edward of Weimar* [1876] 1 QBD 499.

One of the principles to be considered by a trial Judge in granting an interlocutory injunction is whether or not there is a serious question to be tried in the sense that the claim was not frivolous or vexatious. *(American Cynanamid v. Ethicon Ltd.* [1975] 1 All ER 504). From the facts and circumstances available from the relevant affidavits I am clearly of the opinion that there is no serious question to be tried in the sense that the claim in the present suit before this Court is frivolous and vexatious. It is on this point alone that I decide to set aside, which I hereby do, the interim injunction granted to the plaintiffs on 16 May 1983, and the plaintiffs' application before the Bukit Mertajam Magistrate's Court in Civil Action No. 242/82 be heard as soon as possible.

Also found at [1984] 2 CLJ 287